

Jeffrey S. Jacobovitz (pro hac vice to be submitted)
Justin Ferraro (pro hac vice to be submitted)
ARNALL, GOLDEN, GREGORY LLP
2100 Pennsylvania Avenue, Suite 350S
Washington, D.C. 20037
Phone: (202) 677-4056
Facsimile: (202) 677-4057
Email: jeffrey.jacobovitz@agg.com

Carl J. Oreskovich, WSBA #12779
Andrew M. Wagley, WSBA #50007
ETTER, McMAHON, LAMBERSON,
VAN WERT & ORESKOVICH, P.C.
618 West Riverside Avenue, Suite 210
Spokane, WA 99201
Phone: (509) 747-9100
Facsimile: (509) 623-1439 2
Email: carl@ettermcmahon.com

Charles R. Macedo (pro hac vice to be submitted)
David Goldberg (pro hac to be submitted)
AMSTER, ROTHSTEIN & EBENSTEIN LLP
405 Lexington Ave
New York, NY 10174
Phone: (212) 336-8000
Facsimile: (212) 336-8001
Email: cmacedo@arelaw.com

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

CODY ALLEN EASTERDAY,

Plaintiff,

No. _____

v.

TYSON FRESH MEATS, INC.,

Defendant.

COMPLAINT

TABLE OF CONTENTS

INTRODUCTION	3
JURISDICTION AND VENUE	4
PARTIES.	5
FACTUAL ALLEGATIONS	6
A. Contracting Arrangement Between Easterday and Tyson Through the Years	6
B. Background of the Market.....	17
C. Relevant Market.	18
D. Anticompetitive Conduct and Effects	22
E. Harm to competition	24
F. Antitrust Standing	28
G. Effect on Interstate Commerce.....	28
COUNTS.....	29
PRAYER FOR RELIEF	35
DEMAND FOR TRIAL BY JURY	36

1
2 Plaintiff Cody Allen Easterday (“Plaintiff” or “Mr. Easterday”) brings this
3
4 Complaint against Defendant, Tyson Fresh Meats, Inc. (“Tyson” or “Defendant”)
5
6 for injunctive relief and monetary damages as well as such other relief as
7
8 specified herein, as follows:

9 INTRODUCTION

10 1. This is an antitrust and unfair competition case directed at the anti-
11
12 competitive, unfair, abusive, unjustly discriminatory, and deceptive acts and
13
14 practices, among others by Defendant. Through the wielding of immense market
15
16 power, resulting from acquisition and consolidation, Defendant has created a
17
18 monopsony market in the Pacific Northwest region of the U.S. (“Pacific
19
20 Northwest”) – being Washington, Oregon, and Idaho – whereby cattle feeders in
21
22 that region have no reasonable choice but to contract with Defendant despite the
23
24 anti-competitive, unfair, abusive, unjustly discriminatory, and deceptive acts and
25
26 practices of Defendant, including as to pricing, contract terms, and contract
27
28 performance. The Defendant has misused its economic power over cattle feeders
29
30 and contracts, and committed violations of the Packers and Stockyards Act of
31
32 1921 (“PSA”), the Sherman Antitrust Act of 1890 (“Sherman Act”), and the
Washington State Consumer Protection Act (“WCPA”).

2. Plaintiff was a cattle feeder and President of Easterday Ranches, Inc.

1
2 (“Easterday Ranches”) for over 20 years and during much of that time worked
3
4 with Tyson, to provide a steady supply of fed cattle for harvest at Tyson’s plant
5
6 located near Pasco, Washington. As set forth in greater detail below, from 2010
7
8 through 2020, Plaintiff and his company, Easterday Ranches, were financially
9
10 harmed by the anti-competitive, unfair, abusive, unjustly discriminatory, and
11
12 deceptive acts and practices, among others, by Defendant, including being
13
14 charged erroneous fees, interest, and commissions, in violation of federal and
15
16 state law, including the PSA.

17 **JURISDICTION AND VENUE**

18
19 3. This Court has subject matter jurisdiction over this action pursuant to
20
21 28 U.S.C. §§ 1331 and 1337, because this action arises under Section 202 of the
22
23 PSA, 7 U.S.C. § 181 et seq, and Section 1 of Sherman Act, 15 U.S.C. §2. This
24
25 Court also has subject matter jurisdiction under 28 U.S.C. § 1332 because the
26
27 amount in controversy exceeds \$75,000, exclusive of interest and costs, and is
28
29 between citizens of different states. This Court also has supplemental jurisdiction
30
31 pursuant to 28 U.S.C. § 1367 over any state cause of action set forth herein,
32
including as to violations of the WCPA.

33
34 4. This Court has personal jurisdiction over Defendant because
35
36 Defendant transacted business, maintained substantial contacts, and committed

1
2 illegal overt acts, as discussed in more detail below, in the Eastern District of
3 Washington (“District”). Defendant should, therefore, have foreseen the
4 possibility of being brought before this Court to answer for any illegal acts
5 relating to its business conducted in the District. This Court also has personal
6 jurisdiction over the Defendant under PSA § 209(b), which allows violations of
7 the PSA to be enforced by any United States district court of competent
8 jurisdiction. 7 U.S.C. § 209(b)(2).

9
10
11
12
13
14 5. Venue is proper in the District under 28 U.S.C. § 1391, because
15 Plaintiff’s farm and feedlot were located in the District and Defendant’s beef
16 packing plant, where the fed cattle were delivered by Plaintiff to Defendant, is
17 located in the District. Throughout the course of the Plaintiff’s and Defendant’s
18 relationship, various personnel of Defendant would routinely visit Plaintiff’s
19 farm and feedlot in the District. Additionally, to the extent 7 U.S.C. § 209(b), is
20 interpreted as venue provision, venue is also proper in the District under that
21 statute as a court of competent jurisdiction.

22 **PARTIES**

23
24
25
26
27
28
29 6. Plaintiff, Cody Allen Easterday (“Easterday”), is a citizen of the State
30 of Washington.

31
32 7. On information and belief, Defendant Tyson Fresh Meats, Inc.

1
2 (“Tyson Fresh Meats”), is a wholly owned subsidiary of Tyson Foods, Inc., which
3
4 is a publicly traded corporation listed on the New York Stock Exchange (NYSE:
5 TSN). Tyson Fresh Meats is a corporation organized in Delaware, with its
6
7 principal place of business located at 2200 W. Don Tyson Pkwy, Springdale,
8
9 Arkansas 72762.

10 **FACTUAL ALLEGATIONS**

11 **A. Contracting Arrangement Between Easterday and Tyson** 12 13 **Through the Years** 14

15 8. Mr. Easterday has been an owner of Easterday Ranches since
16
17 purchasing the company in 1997 and served as the President from 1998 through
18
19 January 2021. From 2008 through 2022 until its liquidation through bankruptcy,
20
21 Easterday Ranches operated as an S-corporation.

22 9. Easterday Ranches’ corporate headquarters was located at 5235
23
24 Industrial Way, Pasco, WA 99301 and operated three finishing yards (or feedlots)
25
26 with a combined total feeding capacity of approximately 75,000 head as of the
27
28 end of 2020. The finishing yards consisted of (1) the South Feedlot located at
29
30 144503 Nine Canyon Rd., Kennewick, WA 99336 (originally acquired in 1997
31
32 and expanded several times over the following 25 years); (2) the North Feedlot
located at 8230 Blanton Rd, Eltopia, WA 99330, (property acquired in 2009;

1
2 construction completed in 2010), and (3) Royal City Feedlot located at 14999 Rd
3 12.5W, Royal City, WA (long-term lease entered into/improvements made in
4 2014). In addition to the three finishing yards, while in operation, Easterday
5 Ranches either operated directly or contracted with approximately 2-6 “grow
6 yard” facilities dependent on the time of year.
7
8
9

10 10. During the course of its operation, Mr. Easterday, in his personal
11 capacity, owned, in part, land on which Easterday Ranches operated and fed
12 cattle.
13
14

15 11. With the expansion arising out of the construction of the North
16 Feedlot which was completed in 2010, Mr. Easterday through Easterday Ranches
17 became one of the largest suppliers of fed cattle to Tyson in the Pacific
18 Northwest.
19
20
21

22 12. Prior to 2010, Easterday Ranches and Tyson operated under a long-
23 standing contractual arrangement whereby Plaintiff procured and purchased lots
24 (i.e., groups) of feeder cattle in which Easterday Ranches and Tyson each owned
25 50 percent (“50/50 Arrangement”). Feeder cattle are young cattle ready to be
26 placed in a feedlot for fattening. Under the 50/50 Arrangement, both parties
27 shared equally in the risk of loss – both production and market – or potential
28 profits arising out of feeding cattle to finished weight. Tyson paid Easterday
29
30
31
32

1
2 Ranches for custom feeding services on Tyson's 50% share of the cattle, which
3
4 provided for a fixed margin on that portion of the cattle on feed and helped to
5
6 offset any losses on cattle that typically occur as part of the cattle cycle. This
7
8 arrangement kept each parties' incentives aligned to assure a supply of cattle to
9
10 the plant in a manner that was profitable through both the feeding and processing
11
12 stages of the supply chain.

13
14 13. Sometime in 2009, Tyson and Mr. Easterday had a discussion to
15
16 increase the capacity of his feedlots, to which Mr. Easterday agreed under the
17
18 presumption that the long-standing 50/50 Arrangement would continue. The
19
20 50/50 arrangement existed for the majority of the thirteen years since Cody
21
22 Easterday acquired an interest in Easterday Ranches. The annual throughput was
23
24 increased to 120,000 head of cattle and under the presumption that the 50/50
25
26 agreement would continue Mr. Easterday assumed he would have the full risk of
27
28 the cattle on half that number (60,000 head).

29
30 14. Following Mr. Easterday's agreement to increase the feedlot capacity,
31
32 Easterday Ranches obtained a construction/term loan for \$6.266 million from a
33
34 lender, Rabo Agrifinance, Inc. (the "Construction Loan"), and reinvested past
35
36 profits to fund the expansion of feedlot capacity by acquiring property and
37
38 building the North Feedlot at a total investment cost of over \$13 million.

1
2 15. Mr. Easterday personally guaranteed the Construction Loan. The
3 Construction Loan contained provisions that (a) required completion of
4 construction, and (b) allowed the lender to complete construction if Easterday
5 Ranches failed to do so and recover all amounts advanced including construction
6 completion costs from Easterday Ranches and Mr. Easterday regardless of
7 whether or not the feedlot was operational. The loan was also cross-defaulted to
8 loan agreements that various of Mr. Easterday's other business interests had
9 entered into, such that a default under the Construction Loan would be a default
10 on loans owed by his various other business interests. Once Mr. Easterday and
11 Easterday Ranches entered into the Construction Loan, Mr. Easterday had no
12 practical choice but to complete the project in order to preserve his other business
13 interests.
14
15
16
17
18
19
20
21

22 16. In or around the spring of 2010, after Tyson had successfully enticed
23 Mr. Easterday to expand Easterday Ranches feeding capacity, and only after
24 Easterday Ranches had completed a substantial portion of the new construction
25 necessary to increase feedlot capacity and thus spent proceeds of the
26 Construction Loan, Defendant, through its representative and agent, informed
27 Mr. Easterday that Tyson wanted to change the terms of their longstanding
28 arrangement and that Tyson no longer wanted to own and feed cattle under the
29
30
31
32

1
2 existing 50/50 Arrangement, which was the agreement Mr. Easterday relied upon
3
4 in deciding to expand his feedlot capacity. Instead, Tyson determined that
5
6 Easterday Ranches would own and feed the cattle prior to their delivery as
7
8 finished cattle ready for slaughter under Tyson's so-called "Pioneer Model"
9
10 contracting arrangement, i.e., a "Cattle Feeding Agreement." Under the new
11
12 terms, Tyson required Mr. Easterday to shoulder 100% of the risk of any profit
13
14 shortfall or loss associated with purchasing, feeding, and caring for all of the
15
16 cattle (approximately 120,000 head per year) prior to their delivery to Tyson at
17
18 the Tyson Pasco plant. After having invested heavily in his relationship with
19
20 Tyson, particularly the capital invested into the multimillion-dollar feedlot
21
22 expansion in-progress at the time, and because of a lack of other options for
23
24 marketing his cattle, Mr. Easterday felt he had no choice but to accept the new
25
26 "Pioneer Model" arrangement and sign Tyson's Cattle Feeding Agreement as
27
28 presented in a take-it-or-leave it fashion by Tyson's employee.

29
30 17. In the context of the above circumstances, beginning in at least 2010
31
32 and continuing through 2020, Easterday Ranches entered into a series of written
Cattle Feeding Agreements with Tyson drafting the agreements that represented
the "Pioneer Model" arrangement (each, a "Cattle Feeding Agreement") and
presenting them to Mr. Easterday for signature. Under each Cattle Feeding

1
2 Agreement, Easterday Ranches agreed to procure feeder cattle (which typically
3 weigh between 600 and 900 pounds) on behalf of Tyson and feed, care, and
4 manage the cattle until they reached a weight of approximately 1,250 to 1,500
5 pounds, when they were ready to be sent to slaughter as finished cattle at Tyson's
6 plant located in Pasco, Washington. The Tyson plant has a daily capacity of over
7 2000 head, and the plant employs approximately 1,200 people in the state of
8 Washington.
9

10
11
12
13
14 18. More recently, Easterday Ranches and Tyson Fresh Meats entered into
15 a Cattle Feeding Agreement ("2017 CFA"), effective as of February 20, 2017.
16

17
18 19. On August 20, 2020, Easterday Ranches and Tyson Fresh Meats
19 signed a purported amendment to the 2017 CFA ("2020 Amendment"), effective
20 August 20, 2020, extending the terms of the 2017 CFA through August 20, 2021.
21

22
23 20. On December 7, 2020, Easterday Ranches and Tyson signed a
24 Confirmation of Ownership Agreement ("2020 Confirmation"), effective
25 December 7, 2020, to confirm Tyson's ownership of feeder cattle under the 2017
26 CFA and 2020 Amendment.
27
28

29
30 21. Each of the 2017 CFA, the 2020 Amendment, and 2020 Confirmation
31 were drafted by Tyson and presented to Mr. Easterday for signing. The absence
32 of Easterday Ranches' ability to negotiate more reasonable terms was indicative

1
2 of Tyson's significant market power.

3
4 22. Mr. Easterday understood at the time he signed each agreement that
5 he did not have the ability to negotiate with Tyson any of the terms or conditions
6 of such agreements. Indeed, in 2018, when he tried to renegotiate pricing terms,
7 he was rejected.
8
9

10 23. Mr. Easterday, as president of Easterday Ranches, signed the 2017
11 CFA, the 2020 Amendment, and the 2020 Confirmation.
12
13

14 24. When entering the 2017 CFA, Tyson also required Mr. Easterday to
15 execute a personal guaranty ("Personal Guaranty") under which Mr. Easterday
16 personally guaranteed the "full and timely payment, performance, and
17 satisfaction by EASTERDAY RANCHES, INC. of all of their obligations to"
18 Tyson Fresh Meats pursuant to the 2017 CFA. *See* 2017 CFA, pg. 5.
19
20
21

22 25. Under the terms of the Cattle Feeding Agreements, Tyson advanced
23 Easterday Ranches funds to purchase, house, and feed the cattle at the Easterday
24 feedlots. Easterday Ranches was required to reimburse Tyson all advanced funds,
25 including interest and a \$15/per head guaranteed payment upon final settlement.
26 These illegal actions by Tyson contributed to the alleged loss Easterday Ranches
27 and Plaintiff sustained.
28
29
30
31
32

26. The agreement provided that the scheduling and delivery of cattle

1
2 would be coordinated between Easterday Ranches and Tyson. However, in
3
4 practice, Tyson exerted complete control over the timing of delivery. This ability,
5
6 typically held solely by the feed yard, had a direct impact on the profitability for
7
8 a particular lot of cattle. Without this autonomy, a feedlot operator cannot choose
9
10 to sell finished cattle at a time and weight that is most profitable.

11 27. Per the respective CFAs, the price for the cattle was determined by a
12
13 grid pricing scheme using Tyson's proprietary formula, which was based on a 5-
14
15 area average weighted price of fed cattle sold by feedlots in
16
17 Texas/Oklahoma/New Mexico; Kansas; Nebraska; Colorado; and
18
19 Iowa/Minnesota (see further discussion of this in Section B below).

20 28. At the time of delivery of cattle to the Tyson Pasco Plant, Easterday
21
22 would not be paid the price outright, rather Tyson would calculate a final
23
24 settlement amount by netting the sales price for the cattle against (a) the amount
25
26 it paid to Easterday Ranches for the purchase, feed, and care of cattle, (b) interest
27
28 charged to Easterday Ranches on the amount paid by Tyson to Easterday Ranches
29
30 for the purchase, feed, and care of cattle and (c) a \$15 per head guaranteed profit
31
32 to Tyson.

29 29. The 2017 CFA states – **"EASTERDAY RANCHES, INC.**
30
31 **understands that EASTERDAY RANCHES, INC. is not guaranteed a profit**
32

1
2 **and that EASTERDAY RANCHES, INC. bears the market risk that the**
3
4 **cattle fed hereunder will not return amounts sufficient to return TFM's**
5 **invested capital (including interest) plus \$15 per head."**
6

7 30. The 2017 CFA provides that, while management of market risks
8 arising under the 2017 CFA is the sole responsibility of Easterday Ranches,
9 Easterday Ranches "has the option to use [Tyson] CME contracts, both basis and
10 actual basis, to help manage his risk." Tyson provided advice and information
11 about the market and their opinion of what to trade and when.
12
13

14
15 31. In addition to the personal guarantee by Mr. Easterday, Easterday
16 Ranches was also required to assume all of the financial risk of the operation
17 under the 2017 CFA and to indemnify Tyson against cattle deaths. Thus, as
18 personal guarantor, Mr. Easterday was required to bear the financial risk if
19 Easterday Ranches did not perform.
20
21
22

23
24 32. Despite statutory requirement, even when Tyson did owe Easterday
25 Ranches for a particular lot of cattle, as a matter of course, Tyson failed to timely
26 pay Easterday Ranches within 48 hours of the sale.
27
28

29 33. In or around 2013, Tyson approached Mr. Easterday, to obtain his
30 permission to use Mr. Easterday's name and photograph with a "Cody's Beef"
31 joint venture in Japan for Tyson Customer Nippon Ham.
32

1
2 34. Under the “Cody’s Beef” joint venture, Mr. Easterday would
3
4 supervise the feeding of the cattle by Easterday Ranches, on the Easterday
5
6 feedlots, which were in turn sold to Tyson for resale to Nippon Ham Group
7 (“Nippon Ham”) in Japan.¹
8

9 35. Between approximately 2016 and November 2020, Mr. Easterday
10
11 falsely provided invoices under the Cattle Feeding Agreements to Tyson for
12
13 which he has been ordered to provide restitution less any offsets. On November
14
15 30, 2020 Mr. Easterday revealed this activity to Tyson and proceeded to
16
17 cooperate with, and facilitate, a Tyson audit of Mr. Easterday and Easterday
18
19 Ranches’ books and records.
20

21 36. On December 7, 2020, Tyson falsely represented to Mr. Easterday that
22
23 it would not seek criminal charges, and Mr. Easterday agreed to execute an
24
25 ownership agreement, without counsel present, whereby Mr. Easterday
26
27 transferred ownership to Tyson of cattle owned by Easterday Ranches that had
28
29 not been invoiced to Tyson. This agreement also included language affirmatively
30
31 stating that under the terms of the 2017 CFA, Tyson owned the cattle fed by
32
33 Easterday Ranches at all times prior to delivery. This language was contrary to

¹ The joint venture between Tyson and Mr. Easterday concerning “Cody’s Beef” is the subject of a separate litigation commenced by Mr. Easterday against Tyson in *Easterday v. Tyson Fresh Meats Inc* (4:2022-cv-05155).

1
2 Mr. Easterday's understanding of the 2017 CFA and contrary to the direct
3 representations made by Tyson to Mr. Easterday in at least 2010 and 2014, and
4
5 onward.
6

7 37. If Tyson owned the cattle during their time spent in the Easterday
8 feedlot, this implies that Tyson was indirectly paying Mr. Easterday an
9 anticompetitive suppressed price for feeding cattle for Tyson, and that price was
10 anticompetitive due to Tyson's exertion of monopsony market power.
11
12

13 38. Further, if Tyson owned the cattle prior to their delivery to Tyson, then
14 Tyson was acting in an anticompetitive manner by exerting its monopsony
15 market power to shift the economic risk of the cattle ownership to Mr. Easterday
16 and Easterday Ranches (without the economic benefit of the cattle ownership),
17 as Mr. Easterday and/or Easterday Ranches was (i) providing a personal
18 guarantee under the 2017 CFA, (ii) shouldering 100% of the market and other
19 risks relating to the cattle prior to delivery to Tyson under the 2017 CFA, (iii)
20 paying an interest rate on the advanced funds, (iv) paying a guaranteed \$15 per
21 head profit to Tyson and (v) unable to control when cattle were delivered and
22 harvested.
23
24
25
26
27
28
29

30 39. Upon information and belief, Tyson inconsistently reported the
31 ownership of the cattle to regulatory authorities.
32

1
2
3 **B. Background of the Market**

4 40. There are only two packers of fed cattle in the Pacific Northwest –
5
6 Tyson and AgriBeef. AgriBeef is an independent packer, and approximately 70-
7
8 75% of AgriBeef's cattle supply come from their own feedlots.

9 41. In 2006, Tyson shuttered its packing plant in Boise, Idaho, leaving
10
11 only one Tyson packing plant in the Pacific Northwest, which is located in Pasco,
12
13 Washington. Tyson accounted for approximately 80-85% of the fed cattle
14
15 purchased in the Pacific Northwest from 2006 to 2020.

16 42. Beginning in 2010, Tyson changed its business model in the Pacific
17
18 Northwest to no longer explicitly "own" the cattle. Rather, Tyson required cattle
19
20 feeders to carry all the financial risk in feeding and caring for cattle until they
21
22 reached market weight under their "Pioneer Model" contracting arrangement.
23
24 The Pioneer Model contract has been the subject of other litigation by another
25
26 company.

27 43. When Mr. Easterday attempted to seek a change to the terms of this
28
29 arrangement and renegotiate their contracts, Tyson exercised its market power
30
31 and threatened to shut down the Pasco packing plant, which was the only
32
remaining Tyson packing plant in the Pacific Northwest and also the only viable

1
2 offtake arrangement for Easterday given the size of the Easterday feeding
3 operations and the limited additional capacity of AgriBeef – the only other
4 processing plant in the region. As noted above, Agrib Beef maintained its own
5 supply of approximately 70-75% of its needs. Upon information and belief,
6
7 Tyson made similar threats to other cattle feeding companies.
8
9

10 **C. Relevant Market**

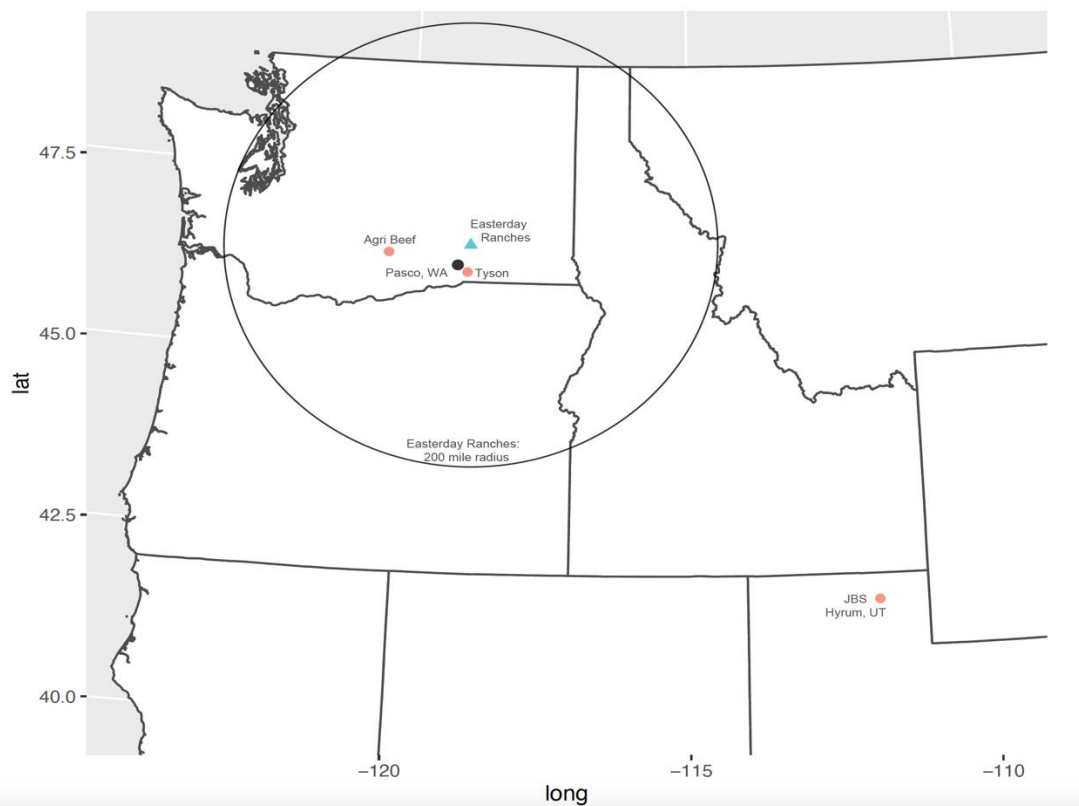
11
12 44. The relevant geographic market is defined based upon the ability of
13 those affected (in this case cattle feeders) to escape the effects of the alleged
14 monopsony power. Fed cattle (i.e., cattle that are ready for harvest) are expensive
15 to transport due to their size. Additional costs due to shrink (cattle losing weight)
16 and risk of injury and mortality increase as shipping distances increase. In a 2011
17 survey of large feedlots (capacity for 1,000 head or more) conducted by the U.S.
18 Department of Agriculture, it was documented that cattle being shipped to
19 slaughter (i.e., fed cattle) traveled a mere 166 miles, on average.¹ The USDA
20 report goes on to explain that feeding and processing facilities are regionally co-
21 located to allow for expedited delivery for slaughter and to minimize transport
22 time and stress on cattle. This indicates that the relevant geographic market for
23
24
25
26
27
28
29
30
31
32

¹ https://www.aphis.usda.gov/animal_health/nahms/feedlot/downloads/feedlot2011/Feed11_dr_PartI_1.pdf, p.80.

1
2 fed cattle in this case is the Pacific Northwestern area of the U.S. including
3 Washington, Oregon, and Idaho.
4

5 45. Figure 1 is a map of the Pacific Northwest region that shows a
6 concentric circle of 200 miles around Easterday Ranches. Within this circle of
7 200 miles, Tyson's only domestic competitor in the beef packing business is Agri
8 Beef, which is mostly vertically integrated and not a viable outlet for Easterday
9 Ranches, given the large size of Easterday's feedlots. Far outside the circle is the
10 JBS packing house in Hyrum, Utah. The JBS Hyrum Utah facility is over 600
11 miles from Easterday Ranches and requires travel over multiple mountain passes
12 which are subject to closure in winter due to travel conditions. The JBS plant was
13 too distant to provide an economically feasible outlet for Mr. Easterday's fed
14 cattle.
15
16
17
18
19
20
21

22 *Figure 1. Map of the Pacific Northwest Large FSIS Fed Cattle Processing*
23 *Plants*
24
25
26
27
28
29
30
31
32



46. In order for Easterday Ranches to escape the alleged monopsony power that Tyson exerted, Easterday would need to find an alternative processor to purchase its fed cattle within a reasonable shipping radius. As shown in Figure 1, there are only two processing operations within the relevant shipping area – Tyson and AgriBeef. Given that AgriBeef is vertically integrated and did not have sufficient capacity to harvest all of Easterday Ranch’s fed cattle, Easterday was left with only one buyer – Tyson. Due to the lack of available alternative beef processors in the Pacific Northwest region of the U.S., the Defendant possessed sufficient market power to enable them to exercise monopsony power when

1
2 dictating the pricing and other terms in fed cattle procurement contracts (e.g.,
3 CFA) to Easterday and other cattle feeding operations in the Pacific Northwestern
4 U.S.
5

6
7 47. The relevant product market identifies product(s) that are reasonably
8 interchangeable between the product at issue (fed cattle) and potential substitutes
9 that the buyer may consider. Easterday Ranches was not able to feasibly switch
10 its production systems away from feeding cattle in favor of other alternatives
11 (such as crop production, dairy production, etc.) in order to escape the price
12 suppression effectuated by Tyson's alleged monopsony power. Cattle feeding
13 operations are capital intensive operations requiring substantial capital
14 investments that are business specific. As such, cattle feeders (including
15 Easterday) will often continue to operate, even when prices are suppressed, in an
16 attempt to cover their loan payments and/or continue to try and cover their fixed
17 costs.
18

19 48. On the procurement side of the market, the Defendant's processing
20 plant is species-specific, i.e., it is a processing plant that harvests *cattle*. As such,
21 the Defendant and other cattle processors in the area (i.e., AgriBeef) would not
22 be willing or able to procure other species of animals (e.g., swine, broilers) to fill
23 their processing operations. Likewise, processors for other species of animals
24

1
2 (e.g., swine, broilers) would not be willing or able to procure cattle to fill their
3
4 processing operation. For these reasons, the relevant product market in this case
5
6 is the market for fed cattle within 200 miles of the Easterday Ranch.

7 **D. Anticompetitive Conduct and Effects**

8
9 49. Through Tyson's control of the open cattle purchasing market,
10 threatening behavior, and pressure to enter into contracts with anticompetitive
11 terms for Tyson's benefit, Tyson exerted significant market power over the supply
12 side of the market for fed cattle in Pacific Northwest.
13
14

15 50. Tyson purchased its competitor Iowa Beef Processors, Inc. ("IBP") in
16 2001 and throughout the next two decades consolidated its control over the beef
17 open market in the Pacific Northwest. One of the ways Tyson exerted control was
18 through forcing cattle feeders, such as, but not exclusively, Mr. Easterday, to enter
19 into contracts with anticompetitive and unfair terms and pricing and other terms
20 in Tyson's favor, such as the "Pioneer Model" CFAs.
21
22
23
24

25 51. Tyson has attempted to retroactively claim that under the 2017 CFA,
26 2020 Amendment, and 2020 Confirmation, ownership transferred from
27 Easterday Ranches to Tyson prior to Easterday's delivery of the cattle to the
28 Pasco plant. Tyson's position on December 2020 regarding the ownership of the
29 cattle under the 2017 CFA is inconsistent with the prior representations that Tyson
30
31
32

1
2 made to Mr. Easterday. As a result, either Tyson was unfair and deceptive towards
3 Mr. Easterday requiring Easterday Ranches to pay interest and fees it would not
4 have otherwise paid if Tyson in fact owned the cattle, or Tyson was, upon
5 information and belief, deceptive towards Washington state and the U.S.
6 Department of Agriculture in regulatory filings in order to receive an advantage
7 in the market.
8
9
10
11

12 52. Tyson was aware, or should have been aware, that the contract terms
13 were unfair and deceptive, and that its control over the regional market left no
14 viable alternatives for Mr. Easterday but to continue supplying Tyson with cattle.
15 Additionally, Tyson's threats to close the Pasco plant in response to Mr.
16 Easterday's attempts to renegotiate the contract terms, exhibits Tyson's
17 knowledge that they were cattle feeders' only option in the region and indicative
18 of Tyson's market power.
19
20
21
22
23

24 53. By pushing Plaintiff to continually increase feedlot capacity, Tyson
25 created a supplier, in Plaintiff, who's operations were too large to sell cattle
26 elsewhere. Also, because Plaintiffs resources were so heavily invested in his
27 contract with Tyson, for which he was sustaining losses, Plaintiff could not
28 acquire alternative means of financing due to insufficient collateral.
29
30
31
32

54. The Pacific Northwest market for fed cattle is the relevant product

1
2 market, and the Pacific Northwest is the relevant geographic market.

3
4 55. Tyson possessed and exercised monopsony power in the market for
5 purchasing cattle for slaughter in the Pacific Northwest.
6

7 **E. Harm to Competition**

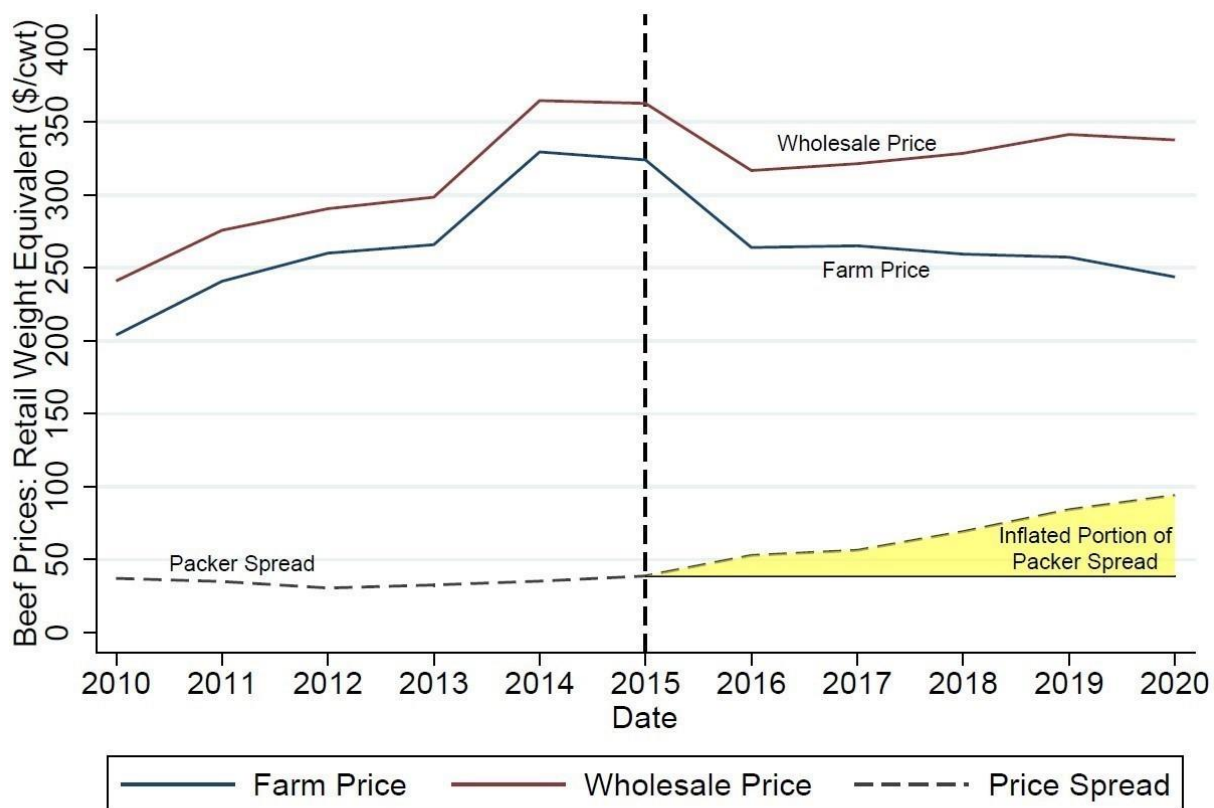
8
9 56. Competition and Plaintiff have been harmed in the Relevant Market
10 outlined above due to Defendant's actions, which has resulted in feedlot operators
11 being paid less than the competitive price, and meatpackers, specifically in this
12 case Tyson, profiting.
13
14

15
16 57. According to a report by Vox Media, as of 2019, the top 4 cattle
17 meatpacking companies (including Tyson), process over 85 percent of all cattle
18 produced in the United States. *See* "How 4 companies control the beef industry,"
19 Vox Media, at 6:50, https://www.youtube.com/watch?v=3_hCLjUrK1E.
20
21 Because just 4 companies purchase and process such a large percentage of U.S.-
22 produced beef, this creates a bottleneck between cattle feedlot owners and the
23 wholesale market for beef, benefiting the meatpackers. *See id.* At 7:30.
24
25
26

27 58. The improved fortunes of the beef packers are captured in Figure 2,
28 which reports the "packer spread"—the gap between the prices that packers pay
29 to feedlots (the farm price) versus the wholesale price of beef received by
30 packers. Figure 2 reports annual average data from 2010-2020, and as shown in
31
32

the Figure from 2015, wholesale beef prices began to diverge from the price of fed cattle (i.e., the farm price shown in Figure 2), enriching the meat packers. The price of fed cattle had historically stayed within \$30 to \$40 per-cwt (i.e., hundredweight) of the wholesale price of beef. But in 2015, the spread between those prices increased dramatically up to \$90, and the price of fed cattle became detached from the wholesale price of beef.

Figure 2. Packer Spread Between Fed Cattle and Wholesale Beef



Source: <https://www.ers.usda.gov/data-products/meat-price-spreads/>

59. Prior to 2006, when Tyson operated meatpacking plants in both Pasco,

1
2 Washington and Boise, Idaho, cattle feeders could solicit competing bids for the
3 purchase of slaughter-ready cattle. However, by shutting down the Boise
4 meatpacking plant in 2006, Defendant eliminated competition, creating a
5 bottleneck of only one geographically feasible meatpacking plant for cattle
6 feeders and ranchers located in the Pacific Northwest.
7
8
9

10 60. This bottleneck, created by Defendant, provides Tyson with
11 significant market power, which it wielded in negotiation of pricing and other
12 terms with feedlot operators. As described above, in approximately 2019 when
13 Mr. Easterday attempted to renegotiate the terms of the 2017 CFA based on
14 changing market conditions, Tyson refused to negotiate and threatened Mr.
15 Easterday that if he did not accept Tyson's terms, they would simply shut down
16 the Pasco meatpacking plant.
17
18
19
20
21

22 61. Additionally, as a result of cattle feeding agreements like the 2017
23 CFA entered into by Easterday, in his individual capacity and as President of
24 Easterday Ranches, Defendants removed a significant amount of fed cattle from
25 the price discovery process of competitive bid auctions. Because beef packers are
26 bypassing the auction process and offering "take it or leave it" pricing and other
27 terms to feedlot owners directly, this limits market transparency, limits the
28 number of competing bids cattle feeders can solicit, and correspondingly reduces
29
30
31
32

1
2 competition.

3
4 62. Further, when Tyson needed additional cattle supply for the Pasco
5 plant, Tyson would ship cattle to Pasco from hundreds of miles away from cattle
6 feeders in the Midwest, choosing to take a loss on those cattle due to the high
7 shipping costs, to avoid paying Mr. Easterday, and other cattle feeders in the
8 Pacific Northwest, higher competitive prices on the open market. This price
9 maneuvering ensured that the price Tyson paid cattle feeders providing cattle
10 under a Pioneer Model arrangement escaped supply and demand conditions of a
11 competitive fed cattle market.
12
13
14
15
16

17 63. The impact of this market concentration, the use of cattle feeding
18 agreements, rather than open market purchases in the relevant market, and other
19 unfair and deceptive practices has resulted in Tyson not only receiving its cattle
20 supply on non-negotiated prices and terms, but also enabling Tyson to lower the
21 amounts it pays to cattle feeders, while still collecting the same or increased
22 prices charged to wholesalers.
23
24
25
26

27 64. Further, Plaintiff knows of at least 3 other instances where Tyson
28 entered into cattle feeding agreements with ranchers based on their “Pioneer
29 Model,” and in every instance the rancher that was a party to that CFA struggled
30 to meet its one-sided, Tyson-favored, terms.
31
32

1
2 65. Tyson purchased fed cattle from Easterday Ranches at a base price
3 with a grid adjustment for quality. The base price was the “5 area” average
4 weighted price of fed cattle sold by feedlots in Texas/Oklahoma/New Mexico;
5 Kansas; Nebraska; Colorado; and Iowa/Minnesota. The 5 area base price was
6 offered to Easterday on a take it or leave it basis, even though a competitive price
7 for fed cattle in the Northwestern U.S. would be higher than the 5 area price
8 because the Pacific Northwest is both a feed and cattle deficit region.
9
10
11
12

13
14 **F. Antitrust Standing**

15 66. Plaintiff has suffered injuries as a result of Defendant’s actions,
16 including but not limited to, the loss of income that he would have received as
17 President and owner of Easterday Ranches absent Defendant’s conduct, as well
18 as, damage to the value and forced liquidation of land comprising of his real
19 estate and improvements, which were owned, in part, in Plaintiff’s personal
20 capacity, and not by Easterday Ranches. Plaintiff has further suffered injury as a
21 result of personal guarantees he was forced to undertake.
22
23
24
25
26

27 67. The injuries to Plaintiff described herein, which are caused by the
28 Defendants’ illegal antitrust activities, are the types of injuries that the antitrust
29 laws and PSA were intended to provide redress. They are direct injuries, not
30 speculative, and there is no potential for duplicative recovery.
31
32

1
2 **G. Effect on Interstate Commerce**

3
4 68. The anticompetitive conduct that caused Plaintiff's injuries, as alleged
5 herein, has had a direct, substantial, and reasonably foreseeable effect on
6 domestic commerce in the United States.
7

8
9 69. Plaintiff contracted with Defendant to provide a steady supply of
10 cattle for Defendant to slaughter, package, and sell as beef across state lines in an
11 uninterrupted flow of interstate commerce.
12

13
14 70. Accordingly, the anticompetitive effects of Defendants' actions have
15 manifested primarily in commerce in the United States, where feedlot operators
16 were paid less than the competitive price and the Defendant profited.
17

18
19 **COUNT I**
20 **VIOLATION OF PACKERS AND STOCKYARDS ACT**

21
22 71. Plaintiff hereby repeats and incorporates by reference each preceding
23 and succeeding paragraph as though fully set forth herein.
24

25 72. Title 7 U.S.C. §192 provides, in pertinent part, "[i]t shall be unlawful
26 for any packer with respect to livestock . . . to . . . (a) [e]ngage in or use any
27 unfair, unjustly discriminatory, or deceptive trade practice or device; or . . . (b) .
28 . . subject any particular person or locality to any undue or unreasonable prejudice
29 or disadvantage in any respect."
30
31
32

1
2 73. Unfair, unjustly discriminatory, and deceptive trade practices under
3
4 the Packers and Stockyards Act are further addressed in Code of Federal
5 Regulations in Part 201 of Title 9. Section 201.98 states “[n]o packer or dealer
6
7 shall, in connection with the purchase of livestock in commerce, charge, demand,
8
9 or collect from the seller of the livestock any compensation in the form of
10
11 commission, yardage, or other service charge unless the charge is for services
12
13 mandated by law or statute and is not inconsistent with the provisions of the Act.”

14 74. 7 U.S.C. §221 provides, in pertinent part, “[e]very packer . . . shall
15
16 keep such accounts, records, and memoranda as fully and correctly disclose all
17
18 transactions involved in his business, including the true ownership of such
19
20 business by stockholding or otherwise.”

21 75. 7 U.S.C. §228b provides, in pertinent part, “[e]ach packer . . . shall,
22
23 before the close of the next business day following the purchase of livestock and
24
25 transfer of possession thereof, deliver to the seller or his duly authorized
26
27 representative the full amount of the purchase price[.]” Additionally, “[a]ny delay
28
29 or attempt to delay by a market agency, dealer, or packer purchasing livestock,
30
31 the collection of funds as herein provided, or otherwise for the purpose of or
32
33 resulting in extending the normal period of payment for such livestock shall be
34
35 considered an “unfair practice” in violation of this chapter.”

1
2 76. Title 7 U.S.C. §209 further provides that, “[i]f any person subject to
3 this chapter violates any of the provisions of this chapter . . . relating to the
4 purchase, sale, or handling of livestock, . . . he shall be liable to the person or
5 persons injured or persons injured thereby for the full amount of damages
6 sustained in consequence of such violation.” Such liability may be enforced “by
7 suit in any district court of the United States of competent jurisdiction[.]”
8
9
10
11

12 77. Beginning on or about June 21, 2010, Tyson Fresh Meats and
13 Easterday Ranches entered into a series of cattle feeding contracts, which
14 substantially altered the terms of their long-standing business arrangement that
15 had existed with Tyson or its predecessor company IBP for over 10 years. The
16 most recent cattle feeding contract was the 2017 CFA as extended and amended
17 by the 2020 Amendment. Under the 2017 CFA and 2020 Amendment, Easterday
18 Ranches and Mr. Easterday were required to sustain all of the risk of market and
19 other losses relating to the cattle prior to delivery to Tyson; pay interest on money
20 advanced by Tyson to purchase cattle that Easterday Ranches allegedly did not
21 own; pay a guaranteed profit of \$15 per head to Tyson; compensate Tyson for
22 unavoidable and inevitable cattle deaths and sickness; suffer inequitable
23 treatment and cede all control over market-ready determination of the cattle,
24 which perpetually favored Tyson in both the risk Tyson would have to hold to
25
26
27
28
29
30
31
32

1
2 maintain its supply of cattle and the price Tyson would ultimately pay for cattle.
3
4 Moreover, Mr. Easterday had to provide a personal guarantee of Easterday
5 Ranches' obligations under the 2017 CFA and 2020 Amendment.
6

7 78. When Mr. Easterday tried to re-negotiate the terms of Easterday
8 Ranches contract with Tyson in approximately 2019, Tyson threatened to shut
9 down the Pasco packing plant, which was the only packing plant within
10 reasonable delivery distance from the Easterday feedlots.
11
12

13
14 79. Tyson willfully and wrongfully obtained and/or maintained its
15 monopsony in the fed cattle market by engaging in unfair, unjustly
16 discriminatory, and deceptive practices set forth herein.
17
18

19 80. As a direct, foreseeable, and proximate result of Defendants' unfair,
20 unjustly discriminatory, inequitable, and deceptive conduct, Plaintiff has suffered
21 damages, in an amount to be proven at trial.
22
23

24 **COUNT II**
25 **VIOLATION SECTION 2 OF THE SHERMAN ACT**

26
27 81. Plaintiff hereby repeats and incorporates by reference each preceding
28 and succeeding paragraph as though fully set forth herein.
29

30 82. Upon information and believe, Defendant manipulated the relevant
31 product and the relevant geographic market by using its market power in the fed
32

1
2 cattle market to create a monopsony. This took place because Tyson accounted
3
4 for 80-85% of fed cattle purchased in the relevant geographic market.

5 83. Defendant had specific intent to create a monopsony in the fed cattle
6
7 market in the Pacific Northwest.

8
9 84. Defendant possessed sufficient market power to succeed in this anti-
10
11 competitive conduct.

12 85. Defendant's anticompetitive conduct described above impacted fed
13
14 cattle prices received by Plaintiff and other cattle feeders.

15 86. As a proximate result of the Defendant's unlawful conduct, Plaintiff
16
17 suffered injury to his business and property, in an amount to be proven at trial.
18

19 **COUNT III**
20 **VIOLATION OF WASHINGTON STATE ANTITRUST STATUTE**

21 87. Plaintiff hereby repeats and incorporates by reference each preceding
22
23 and succeeding paragraph as though fully set forth herein.
24

25 88. To establish an unfair competition claim under the Washington
26
27 Consumer Protection Act ("WCPA"), a plaintiff must show that (1) an unfair or
28
29 deceptive act or practice, (2) occurred in the course of trade or commerce, (3)
30
31 impacted the public interest, (4) injured the plaintiff's business or property, and
32
(5) was caused by the defendant. *See Hangman Ridge Training Stables, Inc. v.*

1
2 *Safeco Title Ins. Co.*, 105 Wash.2d 778, 719 P.2d 531, 533-34, 539 (Wash. 1986)
3
4 (“[P]rivate [W]CPA plaintiffs must establish all five elements.”).

5 89. WCPA, RCW §19.86.093 provides that “[i]n a private action in which
6
7 an unfair or deceptive act or practice is alleged under RCW §19.86.020, a
8
9 claimant may establish that the act or practice is injurious to the public interest
10
11 because it: (1) Violates a statute that incorporates this chapter; (2) Violates a
12
13 statute that contains a specific legislative declaration of public interest impact; or
14
15 (3)(a) Injured other persons; (b) had the capacity to injure other persons; or (c)
16 has the capacity to injure other persons.”

17 90. Defendant entered into cattle feeding agreements with at least 4 cattle
18
19 feeders, including Plaintiff, based on Defendant’s “Pioneer Model,” which
20
21 includes the unlawful, unfair, and deceptive terms and practices described in the
22
23 preceding paragraphs. On information and belief, in each of those instances the
24
25 producer that was a party to their CFA suffered injury and struggled to meet its
26
27 one-sided, Tyson-favored pricing and other terms. Further, Tyson has shown that
28
29 it has the capacity to injury other cattle feeders, not including Plaintiff, now and
30
31 in the future. Upon information and belief, unless relief is granted by this Action,
32
Tyson is likely to continue to exercise its market power and utilize illegal, unfair,
and deceptive acts and practices to manipulate other cattle feeders in the future

1
2 to enter into similar arrangements to the detriment of such cattle feeders and the
3 market as a whole.
4

5 91. Defendant's anticompetitive conduct described above impacted fed
6 cattle prices received by Plaintiff and other cattle feeders.
7

8 92. As a proximate result of the Defendant's unlawful conduct, Plaintiff
9 suffered injury to his business and property, in an amount to be proven at trial.
10
11

12 **PRAYER FOR RELIEF**
13

14 WHEREFORE, Plaintiff respectfully requests that this Court grant the
15 following relief:
16

17 a) Judgment that Defendants' conduct violates the Packers and Stockyards
18 Act, 7 U.S.C. §§ 192, 221, and 228b; and Section 2 of the Sherman Act,
19 15 U.S.C. § 1.
20
21

22 b) Judgement that Defendants' conduct violates the Washington Consumer
23 Protection Act §19.86.20;
24

25 c) Award Plaintiff treble damages (including, without limitation, lost
26 profits), together with costs of this action, including reasonable attorneys'
27 fees.
28
29

30 d) Grant permanent injunctive relief against Defendant to remedy the
31 ongoing anticompetitive effects of Defendants' unlawful conduct;
32

- 1
- 2 e) Award Plaintiff pre- and post-judgement interest at the highest legal rate
- 3 from and after the date of service of this Complaint to the extent provided
- 4 by law on the total amount awarded;
- 5
- 6
- 7 f) Grant such other and further relief as the Court deems just and proper.
- 8

9 **DEMAND FOR TRIAL BY JURY**

10 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff

11 demands a jury trial on all matters so triable.

12

13

14 RESPECTFULLY SUBMITTED this 13th day of February, 2023.

15

16 By: /s/ Carl J. Oreskovich

17 Carl J. Oreskovich, WSBA #12779

18 Andrew M. Wagley, WSBA #50007

19 Attorneys for Plaintiff Cody Allen Easterday

20

21 *Applying for Pro Hac Vice:*

22 ARNALL GOLDEN GREGORY LLP

23 Jeffrey Jacobovitz (Applying for *Pro Hac Vice*)

24 D.C. Bar No. 346569

25 Justin Ferraro (Applying for *Pro Hac Vice*)

26 Virginia Bar No. 92226

27 1775 Pennsylvania Ave, NW

28 10th Floor

29 Washington D.C. 20006

30 Telephone: (202) 677-4056

31 Facsimile: (202) 677-4057

32 Emails: jeffrey.jacobovitz@agg.com

justin.ferraro@agg.com

1
2 AMSTER, ROTHSTEIN & EBENSTEIN LLP
3 Charles R. Macedo (Applying for *Pro Hac Vice*)
4 NY Bar No. 2328318
5 David Goldberg (Applying for *Pro Hac Vice*)
6 NY Bar No. 5134093
7 Amster, Rothstein & Ebenstein LLP
8 90 Park Avenue
9 New York, NY 10016
10 Telephone: (212) 336-8000
11 Facsimile: (212) 336-8001
12 Email: cmacedo@arelaw.com
13 dgoldberg@arelaw.com
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32